

# NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and the agency decides to make substantial changes to the rule after it is proposed, the agency must prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, and the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

## NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

### TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

#### CHAPTER 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL

##### PREAMBLE

*Editor's Note: The following Notice of Supplemental Proposed Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3994.) The Governor's Office authorized the notice to proceed through the rulemaking process on November 7, 2013.*

[R13-208]

**1. Citations to the agency's Notice of Rulemaking Docket Opening, Notice of Proposed Rulemaking, and any other Notices of Supplemental Proposed Rulemaking (if applicable) as published in the *Register* as specified in R1-1-409(A). A list of any other related notices published in the *Register* as specified in R1-1-409(A):**

Notice of Rulemaking Docket Opening: 18 A.A.R. 3011, November 16, 2012

Notice of Proposed Rulemaking: 18 A.A.R. 2958, November 16, 2012

Notice of Proposed Rulemaking: 18 A.A.R. 2977, November 16, 2012

**2. Articles, Parts, or Sections Affected (as applicable)**

**Rulemaking Action**

R19-1-108

Repeal

R19-1-110

Repeal

R19-1-112

Repeal

R19-1-113

Repeal

R19-1-302

New Section

R19-1-313

New Section

R19-1-320

New Section

R19-1-321

New Section

R19-1-324

New Section

**3. Citations to the agency's statutory authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 4-112(A)(2) and (B)(1)

Implementing statute: A.R.S. §§ 4-101 et seq.

**4. The agency's contact person who can answer questions about the rulemaking:**

Name: Pearllette Ramos

Address: Department of Liquor Licenses and Control  
800 W. Washington, 5th floor  
Phoenix, AZ 85007

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Web site: www.azliquor.gov

**5. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

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*Arizona Administrative Register / Secretary of State*  
**Notices of Supplemental Proposed Rulemaking**

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In response to a five-year-review report approved by the Governor's Regulatory Review Council on May 3, 2011, the Department repealed existing rules and made new rules that are consistent with statute and agency practice in a rulemaking approved by Council on May 7, 2013.

An exemption from the rulemaking moratorium contained in Executive Order 2012-03 was granted in an e-mail from Steven Killian, policy advisor to Governor Brewer, dated September 25, 2012. Mr. Killian renewed the exemption for this supplemental notice in an e-mail dated November 7, 2013.

**6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**7. An explanation of the substantial change that resulted in this supplemental notice:**

The Department is repealing four Sections and replacing them with five Sections that are substantially similar in content. The Department is making changes to the five new Sections based on comments from stakeholders. The new Sections in this Notice differ from those published in the Notice of Proposed Rulemaking as follows:

R19-1-302: Knowledge of Liquor Law; Responsibility:

- A subsection dealing with vicarious liability was deleted;
- Managing agent and any controlling person were deleted from the list of those the licensee is to ensure has knowledge of and complies with A.R.S. Title 4.

R19-1-313: Sign Limitations: A distinction was made between interior and exterior signs; a procedure for objectively establishing the cost of a sign was established.

R19-1-320: Practices Permitted by a Producer or Wholesaler:

- (B): Added as a new subsection;
- (C)(1)(a): Amended to require verification be obtained that application has been made by the entity seeking a special event license;
- (C)(1)(e): Added;
- (C)(3): Added;
- (D)(6): Deleted
- (F): Sponsoring a sporting event: Amended to clarify that sponsoring a sporting event, even if a telecast, is allowed only for a licensee with a premises having a permanent occupancy of more than 1,000; defined sporting event; specified when a golf tournament is a sporting event;
- (G): Sponsoring concerts: Subsection was moved from previously published R19-1-321 and amended to be consistent with subsection (F);
- (H): Sponsoring a tradeshow or convention: Amended to clarify what constitutes a trade association;
- (I): Participating in an educational seminar: Added as a new subsection;
- (J): Furnishing a printed menu: Deleted requirements regarding food items;
- (K): Distributing coupons or rebates: Added subsection (3);
- (N): Providing a shelf plan or schematic: Moved from previously published R19-1-321(B)(1);
- (O): Providing a sample to a licensed retailer: Amounts permitted amended; and
- (Q): Providing meals and tickets: Added as a new subsection.

R19-1-321: Practices Permitted by a Wholesaler:

- (B): Added as a new subsection;
- (C): Providing stocking services: Moved subsection (C)(1) to R19-1-320; moved subsection (C)(3) to subsection (D); clarified wholesaler actions regarding stocking that are allowed;
- (D): Providing resetting services: Amended to require notice to any wholesaler whose product may be affected by a resetting; added subsections;
- (L): Providing shelves and racks: This Section previously dealt with providing product display; subsection amended; and
- (L): Sponsoring a concert: Was moved to R19-1-320.

R19-1-324: Standards for Exemption of an Unlicensed Business

- (A)(2): Different hours of operation were established for different kinds of unlicensed businesses;

*Arizona Administrative Register / Secretary of State*  
**Notices of Supplemental Proposed Rulemaking**

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- (A)(3): Permitted spirituous liquors were expanded to include distilled spirits; and
- (B): New subsection was added to address the Department's ability to visit and inspect an unlicensed premises operating under the exemption.

**8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision:**

Not applicable

**9. The preliminary summary of the economic, small business, and consumer impact:**

In this Notice of Supplemental Proposed Rulemaking, the Department continues the process of repealing all existing rules and replacing them with rules that are substantially similar in content to the rules being repealed. The new rules are consistent with both state and federal law regarding a general prohibition of commercial coercion and bribery. Exceptions to the general prohibition are made giving deference to established trade customs that do not interfere with accomplishing the purpose of avoiding commercial coercion and bribery.

**10. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:**

Name: Pearllette Ramos  
Address: Department of Liquor Licenses and Control  
800 W. Washington, 5th floor  
Phoenix, AZ 85007  
Telephone: (602) 542-9021  
Fax: (602) 542-6799  
E-mail: Pearllette.ramos@azliquor.gov  
Web site: www.azliquor.gov

**11. The time, place, and nature of the proceedings to make, amend, renumber, or repeal the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the supplemental proposed rule:**

An oral proceeding regarding the proposed rules will be held as follows:

Date: Friday, January 10, 2014  
Time: 10:00 a.m.  
Location: 800 W. Washington St; 1st Floor Auditorium; Phoenix, AZ 85007

**12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

None

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The rules do not require a permit. Statute requires the Department to issue licenses.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Federal law is applicable to the subject of the rules, specifically 27 CFR, Subchapter A, Part 6, which generally prohibits inducements by a producer or wholesaler to a retailer subject to certain exceptions. This federal regulation explicitly accommodates state law: 27 CFR § 6.21 states that "nothing in this part shall operate to exempt any person from the requirements of any State law or regulation."

Under 27 CFR § 6.21, it is unlawful for a wholesaler or producer to induce a retailer to purchase any products to the exclusion of products sold or offered for sale by another wholesaler or producer by, among other things, "furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services or other thing of value subject to certain exceptions." A.R.S. § 4-243(A)(4) contains a nearly identical ban. A.R.S. § 4-243 (A)(4) permits, but does not require, the Department to establish exceptions to this general prohibition "having regard for established trade customs and the purposes of the subsection." R19-1-320 and R19-1-321 provide these exceptions.

There are differences between the federal rules and in state rules in this Notice of Supplemental Proposed Rulemaking. In particular, the federal rules allows a producer or wholesaler to furnish, give, rent, lend, or sell certain items such as product displays, equipment, and signs to a licensed retailer. The state rules in this Notice of Supplemental Proposed Rulemaking allow a producer or wholesaler to lend these items to a licensed retailer. The Department did this to reduce the possibility of commercial coercion or bribery, to level the playing field between large and small producers and wholesalers, and to encourage the similar treatment of large and small

*Arizona Administrative Register / Secretary of State*  
**Notices of Supplemental Proposed Rulemaking**

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retailers. In doing this, the Department acted within the authority provided to it under A.R.S. § 4-243(A)(4) and by 27 CFR § 6.21.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

No analysis was submitted.

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

No materials are incorporated by reference.

**14. The full text of the rules follows:**

**TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING**

**CHAPTER 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL**

**ARTICLE 1. GENERAL PROVISIONS**

Section

- R19-1-108. ~~Knowledge of Law and Regulations~~ Repealed  
R19-1-110. ~~Sign Limitations~~ Repealed  
R19-1-112. ~~Exceptions to General Rule~~ Repealed  
R19-1-113. ~~Exemptions to A.R.S. § 4-244.05~~ Repealed

**ARTICLE 3. LICENSEE RESPONSIBILITIES**

Section

- R19-1-302. ~~Repealed~~ Knowledge of Liquor Law; Responsibility  
R19-1-313. ~~Repealed~~ Sign Limitations  
R19-1-320. ~~Reserved~~ Practices Permitted by a Producer or Wholesaler  
R19-1-321. ~~Reserved~~ Practices Permitted by a Wholesaler  
R19-1-324. ~~Reserved~~ Standards for Exemption of an Unlicensed Business

**ARTICLE 1. GENERAL PROVISIONS**

**R19-1-108. Knowledge of Law and Regulations Repealed**

All licensees and their employees whose duties require or permit the handling of spirituous liquors shall be familiar with the liquor laws and the rules and regulations of the Director and of the State Liquor Board. It is the responsibility of the licensee to ensure that all employees acquire the aforementioned knowledge.

**R19-1-110. Sign Limitations Repealed**

- ~~A.~~ A person, firm, or corporation engaged in business as a manufacturer, distiller, brewer, vintner, or wholesaler or any officer, director, agent, or employee of such person may lend, to the retailer any sign for interior or exterior use provided:
- ~~1.~~ The sign must bear conspicuous and substantial advertising matter about a product of the manufacturer, distiller, brewer, vintner, or wholesaler.
  - ~~2.~~ The cost of the sign may not exceed \$400.
  - ~~3.~~ A sign may not be utilitarian except as to its advertising or information content.
  - ~~4.~~ No such signs shall be offered or furnished by any manufacturer, distiller, brewer, vintner or wholesaler or by any officer, director, agent, or employee thereof, or by any other person as an inducement to the retailer to purchase or use the products of such manufacturer, distiller, brewer, vintner or wholesaler to the exclusion in whole or in part of the product of any competitor.
- ~~B.~~ No signs or other advertising matter used in connection with the licensed premises of any retailer of alcoholic beverages shall be obscene as determined by applying contemporary state standards.
- ~~C.~~ Licensed special events are not subject to the limitations of subsections (A)(1) through (3).

**R19-1-112. Exceptions to General Rule Repealed**

- ~~A.~~ The following are exceptions in which producers/wholesalers may furnish to the retailer something of value, as long as the retailer is not induced to purchase spirituous liquor from the producer/wholesaler to the exclusion, in whole or in part, of spirituous liquor sold or offered for sale by other persons:
- ~~B.~~ Licensed special events
- ~~1.~~ A producer/wholesaler may participate in an event at which liquor is sold by furnishing advertising, sponsorship, ser-

*Arizona Administrative Register / Secretary of State*  
**Notices of Supplemental Proposed Rulemaking**

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vices, or other things of value as long as:

- a. The event has been issued a special event license.
  - b. The special event license was issued to a civic, religious, or fraternal group, but not a political group.
  - c. If the event is being held at a location that is a licensed retail location nothing of value is left at the location or given to the retailer or retail employees at or following the event.
2. A producer/wholesaler may donate, but not sell directly to the group issued the special event license as long as it is not a political group. If the special event licensee is buying spirituous liquor at retail to resell, the wholesaler may invoice the sale through a retailer following completion of the event.
  3. At a location issued a special event license spirituous liquor sales may be handled in the following ways:
    - a. In the case of an otherwise unlicensed location the nonprofit group is responsible for sales of spirituous liquor.
    - b. In case of a licensed retail location one of the following may occur:
      - i. During the special event the regular licensee ceases all sales of spirituous liquor and the nonprofit group is responsible for all sales of spirituous liquor.
      - ii. During the special event the regular licensee conducts all dispensing/serving under the regular retail license and the nonprofit group does none. The regular licensee is responsible for proper service. The liquor dispensed is that purchased by the retailer from the wholesaler.
      - iii. During the special event the regular licensee conducts all dispensing/serving under the special event license and the nonprofit group does none. The regular licensee and the special event licensee are responsible. The spirituous liquor dispensed is that purchased/donated by/to the special event licensee.
      - iv. During the special event the licensed location is split into an area in which the regular licensee exclusively dispenses and is responsible for all spirituous liquor sales and another separate area in which the nonprofit group exclusively dispenses and is responsible for all spirituous liquor sales.

**C. Resets; rotations; displays**

1. The producer/wholesaler may stock, reset, and rotate at the retail establishment any product that he or she sells to the retailer. Such stocking may include pricing, cleaning shelves, furnishing point of sale written advertising that includes pricing data (as long as it complies with sign limitations), rotating product, cleaning product, or otherwise preparing the product for sale at the point of sale, but may not perform these functions in warm or cold storage areas from which the consumers may not purchase product. Retailers shall not require stock reset or rotation as a condition of shelf space, cold box space, or product display space.
2. A producer/wholesaler may furnish reset services as long as a representative of each affected wholesaler is invited to attend such reset by the retailer with reasonable notice not less than 2 working days before the reset and the retailer consents to the reset. As part of the reset the producer/wholesaler may move his or her own product or that of a competitor.
3. A producer/wholesaler may set up a display of his or her product and may with the consent of the retailer move a competitor's product and may move nonalcoholic products or items as necessary to set up the display.
4. No retail display may consist of an item of potential utilitarian value to the retailer or any person after March 1, 1987, facsimiles are acceptable.

**D. Furnishing retail customers with items of value**

1. A producer/wholesaler may furnish to retail customers advertising novelties which are not directly utilized in the operation of the retail business. Each novelty must be of a value less than \$5.00. In addition, a producer/wholesaler may also furnish to retail customers of any retail establishment items greater than \$5.00 in value but not to exceed a total of \$100.00 in value during any 6:00 a.m. to 1:00 a.m. period per establishment. The items must be given to the customer by the producer/wholesaler employee for each retail establishment and may not pass through the retailer's hands. None of the items may be given to the retailer or the retailer's employees or be left at the retail establishment.
2. Sports schedules that list events at a licensed establishment are permitted.

**E. Refrigerated vehicles.** A producer/wholesaler may furnish a refrigerated vehicle for an event at a licensed or unlicensed location if a special event license has been obtained (excluding political events) for the event. If there is no special event license no approval is granted. The vehicle may be used for storage and dispensing, but no producer/wholesaler personnel may dispense.

**F. Print advertising.** Furnishing advertising copy (ad slicks) of nominal value is permissible.

**G. Sporting events.** A producer/wholesaler may provide to a licensed retailer financial or other forms of event sponsorship, including advertising, if it is in conjunction with a sporting event and no item of utilitarian value remains with the retailer or at the retail location following the conclusion of the sporting event. Signs in connection with sporting events are not subject to value limitations.

**H. Tradeshows and convention.** A producer/wholesaler may participate by sampling, sponsorship, advertising, or otherwise in tradeshows and conventions at licensed or unlicensed establishments in which there is no special event license as long as no regular licensee benefits other than by the promotion of the event itself. Sampling limitations apply, see subsection (Q).

**I. Concerts.** A producer/wholesaler may participate by sponsorship, advertising, or otherwise in a concert at a licensed location with the capacity in excess of 500 persons as long as the regular licensee does not benefit other than by the promotion

*Arizona Administrative Register / Secretary of State*  
**Notices of Supplemental Proposed Rulemaking**

---

of the event itself.

- ~~J.~~ Wine or drink menus. A producer/wholesaler may furnish to a retailer wine or drink menus if the menus have no utilitarian value beyond that of a wine or drink menu and are made available to all retail accounts utilizing such menus.
- ~~K.~~ Tapping equipment. All items authorized by R19-1-241 are permitted for all alcoholic beverages.
- ~~L.~~ Driver sales. All alcoholic beverages may be sold without prior order from the retailer to the wholesaler, commonly called "driver sales".
- ~~M.~~ Coupons and rebates. Coupons and rebates may be distributed by any method including via point of sale, except a producer/wholesaler may not list specific retailers or participate in a retailer's advertisement.
- ~~N.~~ Incentive programs between producers and wholesalers. Arizona law does not regulate incentive programs involving only producers and wholesalers.
- ~~O.~~ Participation at events without alcoholic beverages. The Department does not regulate the participation by producers/wholesalers in events at which spirituous liquor is not sold, offered or served.
- ~~P.~~ Delivery to chain stores/co-ops. Quantity purchases of volume discounted products must be entirely delivered to the approved storage facility of the chain store or retail cooperative.
- ~~Q.~~ Malt Beverage Product returns. At the wholesaler's discretion, malt beverage products of a retail establishment that will be closed for thirty days or more may be exchanged, credited, or refunded. With permission of the director, a wholesaler may exchange, credit or refund malt beverage product that the retailer is discontinuing.
- ~~R.~~ Sampling by producers/wholesalers. Approved sampling procedures are:
  - 1. Sampling operations must be conducted under the supervision of an employee of the sponsoring distiller, vintner, brewer, or wholesaler and accurate records of all sampling procedures and products must be retained.
  - 2. Sampling at on-premises events or wholesaler's premises must be limited to 12 ounces of beer or "cooler" products, 6 ounces of wine, and 2 ounces of distilled spirits per person per brand.
  - 3. Sampling at off-sale events must be limited to 72 ounces of beer, "cooler" or wine products, and 750 milliliters of distilled spirits per person per brand.
  - 4. Sampling from a package with a broken seal may be conducted on on-sale and wholesaler's premises only. No package may be broken or contents consumed on off-sale premises.
  - 5. The wholesaler's representative, when requesting a retail on-sale licensee to prepare a drink for the customer, must pay the retail on-sale licensee for the sample drink.
  - 6. When sampling is conducted on off-sale premises, sampling wares must be distributed to the customer in sealed original packages only.
  - 7. The producer/wholesaler may not buy the retail licensee, or his or her employees, a drink during their working hours or while they are engaged in waiting on or serving customers.
  - 8. The producer/wholesaler may not give a keg of beer, or any spirituous liquor, or other gifts or benefits to a retail licensee.
  - 9. All sampling procedures must conform to federal sampling laws and rules.
- ~~S.~~ Market research programs. Bona fide market research via personal or mail intercept is authorized if:
  - 1. The products being distributed are shipped through or obtained from an authorized licensed wholesaler.
  - 2. People handling the products are 19 years old or older.
  - 3. Participants are of legal drinking age.
  - 4. The total amount of product being tested does not exceed 72 ounces of beer, "cooler", or wine product or 750 milliliters of distilled spirits.
- ~~T.~~ Registration of salespersons or solicitors A.R.S. § 4-222, which required the registration of producer/wholesaler salespersons and solicitors has been repealed. Registration applies to agents of retail cooperatives only.
- ~~U.~~ Holiday Decorations. A distiller, vintner, brewer, importer, producer, or wholesaler may give a retailer brand-identified, holiday decorations that have no utilitarian value to the retailer other than as a decoration.

**R19-1-113. Exemptions to A.R.S. § 4-244.05 Repealed**

Small restaurants, catering establishments, associations, and business establishments hosting private social functions are exempt from A.R.S. § 4-244.05 if the business establishment meets all of the following conditions:

- 1. The possession or consumption of spirituous liquor on the premises is limited to wine and beer and is permitted as an incidental convenience to patrons of the business establishment.
- 2. The business establishment limits possession or consumption of wine or beer on the premises to the hours between noon and 10 p.m.
- 3. The business establishment or premises allows a patron to possess no more than 24 ounces of beer per person, or 6 ounces of wine per person to be consumed on the premises.
- 4. The business establishment notifies the Department on a form prescribed by the Department that it permits patrons to consume or possess beer or wine on the premises.
- 5. The business establishment and/or its proprietor, manager, comptroller, controlling person, or employee shall comply with A.R.S. Title 4, Chapters 1, 2, and 3, and 19 A.A.C. 1.
- 6. The business establishment and/or its proprietor, manager, comptroller, controlling person, or employee shall not permit the number of patrons within the business establishment to exceed the maximum occupancy limitations. The

*Arizona Administrative Register / Secretary of State*  
**Notices of Supplemental Proposed Rulemaking**

maximum occupancy limitations are:

- a. ~~Small restaurant: shall not exceed 40 patrons.~~
  - b. ~~Catering establishment: shall not exceed 300 patrons.~~
  - c. ~~Associations: shall not exceed 300 patrons.~~
  - d. ~~Business establishments hosting private social functions: shall not exceed 300 patrons.~~
7. ~~If any clause, sentence, subsection, Section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subsection, Section or part thereof directly involved in the controversy in which such judgment shall have been rendered.~~

**ARTICLE 3. LICENSEE RESPONSIBILITIES**

**R19-1-302. ~~Repeated Knowledge of Liquor Law; Responsibility~~**

- A.** A licensee shall take reasonable steps to ensure the following individuals acquire knowledge of A.R.S. Title 4 and this Chapter:
- 1. The licensee;
  - 2. The manager;
  - 3. Any employee who serves, sells, or furnishes spirituous liquor to a retail customer; and
  - 4. Any individual who will be physically present and operating the licensed premises.
- B.** This Section is authorized by A.R.S. § 4-112(G)(2).

**R19-1-313. ~~Repeated Sign Limitations~~**

- A.** A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler may directly or indirectly lend to a retail licensee a sign or signs for exterior or interior use if the signs:
- 1. Conspicuously bear substantial advertising for spirituous liquor available from the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee. An exterior or interior sign may include:
    - a. Advertising about the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee;
    - b. Information about a period of time during which the retail licensee offers a special price on spirituous liquor, the special price, and the spirituous liquor; and
    - c. Information identifying spirituous-liquor drinks specials.
  - 2. Have a cost of no more than:
    - a. \$400 as calculated using the value per square foot determined by the Director if made of material such as, but not limited to, banner material, cardboard, or poster board, on which the advertising is printed; and
    - b. \$400 if not included within the provision of subsection (A)(2)(a);
  - 3. Have no utilitarian value other than as advertising;
  - 4. Can be used only as signs;
  - 5. Are not intended to be a fixture of the licensed premises;
  - 6. Are not painted on the licensed premises; and
  - 7. Remain the property of the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee.
- B.** A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall ensure that an exterior sign:
- 1. Faces away from a building on a licensed premises or, if located on a patio area of the licensed premises, is visible primarily by customers outside of the patio area;
  - 2. Except as allowed under subsection (A)(1), includes only:
    - a. The name of the spirituous liquor available and may include the price at which the spirituous liquor is being sold;
    - b. If applicable, a trademark, logo, or slogan associated with the spirituous liquor;
    - c. If applicable, the name of a regulated sporting association that has a sponsorship relationship with the spirituous liquor advertised; and
    - d. If applicable, identification of a community event, concert, or convention lasting no more than 30 days that has a sponsorship relationship with the spirituous liquor advertised.
  - 3. Except as specified in subsection (A)(1)(b), does not include:
    - a. Advertising about the retail licensee,
    - b. Advertising about events occurring on the licensed premises, or
    - c. The retailer's name, trademark, slogan, or logo.
- C.** A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall ensure that an interior sign:
- 1. Faces the interior of a building on licensed premises or, if located on a patio area of the licensed premise, is visible primarily by customers inside the patio area;
  - 2. If applicable, includes informational content such as food pairings or drink specials featuring spirituous liquor available from the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee; and
  - 3. Includes the licensed retailer's name or logo only if the licensed retailer's name or logo is shown in conjunction with at least one of the following:
    - a. The spirituous liquor available from the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee; or

*Arizona Administrative Register / Secretary of State*  
**Notices of Supplemental Proposed Rulemaking**

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- b. The name or logo of the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee
- D.** A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler and the retail licensee to which a sign is lent shall make a reasonable effort to ensure that the sign is used in a manner consistent with A.R.S. Title 4 and this Section. The licensed retailer shall cooperate with a request that the sign be removed if the request is made by the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee that lent the sign.
- E.** A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall not lend a sign or signs to a retail licensee as an inducement to the retail licensee to purchase or use a product available from the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee to the exclusion, in whole or in part, of a product available from a competitor of the producer, domestic microbrewery, wholesaler, or domestic farm winery licensee.
- F.** A licensee shall ensure that a sign or other advertising matter displayed at the licensed premises is not obscene when evaluated by contemporary community standards and does not violate A.R.S. Title 4.
- G.** This Section is authorized by A.R.S. §§ 4-112(G)(4) and 4-243(A)(4).

**R19-1-320. Reserved Practices Permitted by a Producer or Wholesaler**

- A.** In addition to practices specifically authorized under A.R.S. Title 4 and 27 CFR, Subchapter A, the practices outlined in subsections (B) through (Q) allow a distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler to furnish something of value to a licensed retailer or other specified licensee as long as the producer or wholesaler does not furnish something of value to induce the licensed retailer or other specified licensee to purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of another producer or wholesaler. A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall not furnish something of value to a licensed retailer or other specified licensee unless specifically authorized under A.R.S. Title 4, 27 CFR, Subchapter A, or this Chapter.
- B.** A licensed retailer shall not solicit from a distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler any activity not outlined in subsections (C) through (Q) unless the activity is specifically authorized under A.R.S. Title 4 or this Chapter.
- C.** Participating in a special event.
  - 1. A producer or wholesaler may furnish advertising, sponsorship, services, or other things of value at a special event at which spirituous liquor is sold if:
    - a. A special event license is issued for the special event. A producer or wholesaler shall not pay for advertising, sponsorship, services, or other things of value until the wholesaler or producer confirms that a special event application has been submitted for approval under A.R.S. § 4-203.02;
    - b. The special event license is issued to a charitable, civic, religious, or fraternal organization;
    - c. The special event license is not issued to a political committee or organization;
    - d. The producer or wholesaler ensures that nothing of value is left on the licensed premises of a licensed retailer or given to a licensed retailer or employees of a licensed retailer during or after the special event; and
    - e. The producer or wholesaler pays any form of financial sponsorship to the organization to which the special event license is issued.
  - 2. A producer or wholesaler may donate spirituous liquor to a special event licensee identified under subsection (C)(1)(b).
  - 3. A producer or wholesaler may dispense spirituous liquor donated by the producer or wholesaler at a special event.
  - 4. A producer or wholesaler may provide a sign to a special event licensee identified under subsection (C)(1)(b). If the producer or wholesaler provides a sign to a special event licensee, the sign is not subject to R19-1-313.
  - 5. A producer or wholesaler may furnish a vehicle for use by a special event licensee identified under subsection (C)(1)(b). The producer or wholesaler shall ensure that the vehicle is used to dispense spirituous liquor only during the days of the special event.
- D.** Providing an item of value to a customer of a licensed retailer. A producer or wholesaler or its employee or independent contractor may provide an item of value to a customer of a licensed retailer if:
  - 1. The item is provided directly to the customer of the licensed retailer by the producer or wholesaler or an employee or independent contractor of the producer or wholesaler except that a schedule of sporting events, as defined in subsection (F), may be provided to the customer through the licensed retailer;
  - 2. The item provided has a value less than \$5 and bears advertising about the producer, wholesaler, or spirituous liquor available from the producer or wholesaler. The producer or wholesaler may provide an unlimited number of items;
  - 3. The item provided has a value more than \$5 and bears advertising about the producer, wholesaler, or spirituous liquor available from the producer or wholesaler. The producer or wholesaler shall ensure that the total value of all items provided does not exceed \$100 during any 6:00 a.m. to 2:00 a.m. period per licensed premises; and
  - 4. The producer or wholesaler ensures that no item of value is provided to the licensed retailer or an employee of the licensed retailer or is left on the licensed premises;
- E.** Furnishing advertising. A producer or wholesaler may furnish advertising copy in the form of a digital file or camera- or Internet-ready images of nominal value to a licensed retailer.
- F.** Sponsoring a sporting event. If the licensed premises of a licensed retailer has a permanent occupancy of more than 1,000 people and is used primarily for live sporting events, a producer or wholesaler may sponsor and provide advertising to the licensed retailer in conjunction with a live sporting event or telecast of a sporting event at the licensed premises. If the



*Arizona Administrative Register / Secretary of State*  
**Notices of Supplemental Proposed Rulemaking**

---

producer or wholesaler provides a sign as part of the sponsorship of a sporting event, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure no item of value remains with the licensed retailer or at the licensed premises after the sporting event. For the purpose of this subsection, live sporting event means an athletic competition governed by a set of rules or customs to which pre-sold tickets are made available to the public. For nationally recognized sporting events that are seasonal, including but not limited to baseball, football, basketball, soccer, and NASCAR, the conclusion of a live sporting event occurs when the season ends rather than after each individual event of the season. A golf tournament is not a live sporting event unless:

1. The golf tournament is regulated by a golf association; or
2. The golf tournament is held for the benefit of an unlicensed organization and the sponsoring producer or wholesaler ensures that:
  - a. All sponsorship proceeds are provided to the unlicensed organization, and
  - b. Nothing of utilitarian value or other consideration is provided to a licensed retailer.

**G. Sponsoring a concert.** If the licensed premises of a licensed retailer has a permanent occupancy of more than 1,000 people and is used primarily as a concert or live sporting event venue, a producer or wholesaler may sponsor and provide advertising to the licensed retailer in conjunction with a concert at the licensed premises. For the purpose of this subsection, "concert" is a live event with pre-sold tickets for a musical, vocal, theatrical, or comedic performance at the licensed premises. If the producer or wholesaler provides a sign as part of the sponsorship of a concert, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure that no item of value remains with the licensed retailer after the conclusion of the concert.

**H. Participating in a tradeshow or convention.** A producer or wholesaler may provide for a licensee sampling, advertising, and event sponsorship to a trade association in conjunction with a tradeshow or convention if the trade association consists of five or more retail licensees that have no common ownership. If the producer or wholesaler provides a sign as part of the sponsorship of a tradeshow or convention, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure that the sign is physically placed at the location at which the tradeshow or convention is held. The producer or wholesaler shall remove the sign within one business day after the conclusion of the tradeshow or convention and ensure that no item of value remains with the licensed retailer after the conclusion of the tradeshow or convention.

**I. Participating in an educational seminar.** A producer or wholesaler may participate in an educational seminar for employees of a licensed retailer if:

1. The educational seminar occurs on the licensed premises of a producer, wholesaler, or retailer;
2. Content of the educational seminar is substantially related to spirituous liquor available from the producer or wholesaler;
3. Lodging, meals, and transportation expenses incurred by employees of the licensed retailer or the licensed retailer to attend the educational seminar are not paid or reimbursed by the producer or wholesaler. The producer or wholesaler may provide snacks of nominal value to participants in the education seminar;
4. The retailer's expenses associated with organizing, producing, or hosting the educational seminar are not paid or reimbursed by the producer or wholesaler; and
5. No item of value remains with the licensed retailer after the conclusion of the educational seminar.

**J. Furnishing a printed menu.** A producer or wholesaler may, upon request from a licensed retailer, furnish a printed menu for use by the retailer if:

1. All printed menus furnished to a licensed retailer during a calendar year have a fair market value of no more than \$500,
2. A similar menu is made available to all retail accounts that use menus,
3. The menu has no utilitarian value to the licensed retailer except as a menu, and
4. The menu conspicuously bears the name of spirituous liquor available from the producer or wholesaler or the name of the producer or wholesaler.

**K. Distributing coupons or rebates.** A producer or wholesaler may distribute coupons or rebates to consumers by any means including providing the coupons or rebates to a licensed retailer if the coupons or rebates:

1. Can be used only for an off-sale purchase by the consumer from a licensed retailer,
2. Do not specify a licensed retailer at which the coupons or rebates are required to be used, and
3. Are available in approximately the same number of qualifying products the licensed retailer has available for customers if the coupons or rebates are ultimately redeemed by the licensed retailer.

**L. Providing holiday decorations.** A producer or wholesaler may lend holiday-specific decorations to a licensed retailer for use on the licensed premises if the decorations:

1. Bear advertising about a brand, producer, or wholesaler that is substantial, conspicuous, and permanently inscribed or securely affixed; and
2. The decorations have no utilitarian value to the licensed retailer other than as decorations for a specific holiday.

**M. Providing a sample to a customer of a licensed retailer.** A producer or wholesaler may provide a sample of spirituous liquor to a customer of a licensed:

1. On-sale retailer without off-sale privileges if the producer or wholesaler complies with the procedures at A.R.S. § 4-

*Arizona Administrative Register / Secretary of State*  
**Notices of Supplemental Proposed Rulemaking**

---

243(B)(2)(b), which limit sampling to 12 ounces of beer or cooler product, six ounces of wine, or two ounces of distilled spirits per person, per brand to be consumed on the licensed premises;

2. Off-sale retailer if the producer or wholesaler complies with the procedures at A.R.S. § 4-243(B)(3)(c), which limit sampling to three ounces of beer, 1.5 ounces of wine, or one ounce of distilled spirits per person, per day. If the sample provided is for off-sale consumption, the producer or wholesaler shall ensure that the sample is in an unbroken package; or
  3. On-sale retailer with off-sale privileges if the producer or wholesaler complies with subsection (M)(1) when providing samples under the on-sale portion of the license and subsection (M)(2) when providing samples under the off-sale portion of the license.
- N.** Conducting market research. A producer or wholesaler may participate in market research regarding spirituous liquor under the following conditions:
1. The spirituous liquor is provided to research participants by personal delivery or through a delivery service provider;
  2. The spirituous liquor provided to research participants is obtained from or shipped through a wholesaler;
  3. All research participants are of legal drinking age;
  4. Any employee of the producer or wholesaler and any employee of a marketing research business conducting the market research that handles the spirituous liquor is at least 19 years old; and
  5. The amount of spirituous liquor provided to each research participant does not exceed 72 ounces of beer, cooler product, or wine or 750 milliliters of distilled spirits.
- O.** Providing a sample to a licensed retailer. A producer or wholesaler may provide a licensed retailer with a sample of a brand of spirituous liquor that the licensed retailer has not purchased for sale within the last 12 months if the sample does not exceed the following:
1. Wine. Three liters;
  2. Beer. Three gallons; and
  3. Distilled spirits. Three liters.
- P.** Providing a shelf plan or schematic. A producer or wholesaler may provide a recommended shelf plan or schematic for use by a licensed retailer in displaying spirituous liquor or other product in a point-of-sale area.
- Q.** Providing meals, beverages, event tickets, and local ground transportation. Except as prohibited under subsection (I), a producer or wholesaler may provide a licensed retailer with meals, beverages, event tickets, and local ground transportation if:
1. The producer or wholesaler accompanies the licensed retailer while meals and beverages are consumed and ground transportation is used;
  2. The value of the meals, beverages, event tickets, and local ground transportation is nominal; and
  3. The value of the meals, beverages, event tickets, and local ground transportation is deductible as a business entertainment expense under the Internal Revenue Code.
- R.** A producer or wholesaler that sells spirituous liquor to another producer or wholesaler is exempt from the credit prohibition in A.R.S. § 4-242.
- S.** Section is authorized by A.R.S. §§ 4-242, 4-243 and 4-244(3).

**R19-1-321. ~~Reserved~~ Practices Permitted by a Wholesaler**

- A.** In addition to practices specifically authorized under A.R.S. Title 4 and 27 CFR, Subchapter A, the following practices allow a wholesaler to furnish something of value to a licensed retailer or other specified licensee as long as the wholesaler does not furnish something of value to induce the licensed retailer or other specified licensee to purchase spirituous liquor from the wholesaler to the exclusion, in whole or in part, of another wholesaler. A wholesaler shall not furnish something of value to a licensed retailer or other specified licensee unless specifically authorized under A.R.S. Title 4, 27 CFR, Subchapter A, or this Chapter.
- B.** A licensed retailer shall not solicit from a wholesaler any activity not outlined in subsections (C) through (N) unless the activity is specifically authorized under A.R.S. Title 4 or this Chapter.
- C.** Providing stocking services. A wholesaler may stock any spirituous liquor or other product that the wholesaler sells to a licensed retailer. The stocking service provided by a wholesaler:
1. Shall not alter or disturb any spirituous liquor or other product of another wholesaler;
  2. Shall be performed only at a point-of-sale area, including a cold box, from which a consumer may purchase spirituous liquor sold by the retailer. A wholesaler may move spirituous liquor to or from the following locations on the licensed premises:
    - a. A designated delivery entrance, and
    - b. A storage area that is at a reasonable height; and
  3. May include:
    - a. Rotating, cleaning, or otherwise preparing the spirituous liquor or other product for sale at a point-of-sale area; and
    - b. Furnishing advertising materials displayed at a point-of-sale area as authorized under R19-1-313.
- D.** Providing resetting services. A wholesaler may reset spirituous liquor sold to a licensed retailer if requested by the licensed retailer and the resetting does not alter or disturb the product of another wholesaler. The resetting services pro-

*Arizona Administrative Register / Secretary of State*  
**Notices of Supplemental Proposed Rulemaking**

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vided by a wholesaler:

1. Shall be performed only in a point-of-sale area, including a cold box;
  2. Shall not be performed unless at least two working days' notice is provided to any other wholesaler whose product will be affected by the resetting; and
  3. Shall not be performed more frequently than once per year if the resetting involves a substantial reconfiguration of the spirituous liquor department of a retailer.
- E.** Furnishing tapping equipment. A wholesaler may furnish tapping equipment under R19-1-326 to a retail licensee.
- F.** Making a driver sale. A wholesaler may sell to a licensed retailer, through a driver sale, at the current market price, spirituous liquor not previously ordered.
- G.** Delivering a specially discounted quantity purchase. A wholesaler may provide a licensed retailer with a specially discounted price for a quantity purchase if the wholesaler delivers the entire quantity purchased to an approved storage facility of the licensed retailer.
- H.** Accepting returned spirituous liquor products.
1. A wholesaler may allow a licensed retailer that intends to be closed for at least 30 days to exchange beer or other malt beverage products purchased from the wholesaler or to receive a credit for or refund of the amount paid for the malt beverage products;
  2. With permission from the Director, a wholesaler may allow a licensed retailer that is discontinuing sale of a particular beer or other malt beverage product to exchange the product purchased from the wholesaler or to receive a credit for or refund of the amount paid for the beer or other malt beverage product; and
  3. A wholesaler may exchange or accept return of other spirituous liquors as permitted under 27 U.S.C. 205(d) and 27 CFR Subchapter A, Part 11.
- I.** Selling tobacco products or foodstuffs. A wholesaler may sell tobacco products or foodstuffs to a licensed retailer if the price paid by the retailer equals or exceeds the cost to the wholesaler.
- J.** Furnishing promotional items. A wholesaler may provide promotional items to an on-sale retailer. Promotional items, as defined and limited by A.R.S. § 4-243(D) does not include spirituous liquor.
- K.** Facilitating a special event. A wholesaler may facilitate a special event by:
1. Donating spirituous liquor directly to the special event licensee and issuing a net zero cost billing invoice in the name of the special event licensee.
  2. Leaving a delivery vehicle and other equipment necessary for the sale or service of spirituous liquor on the premises of the special event for the duration of the special event and up to one business day before and after the special event.
  3. Leaving spirituous liquor at the special event if:
    - a. The spirituous liquor is properly described on a preliminary billing invoice issued in the names of both the off-sale retailer from which the special event licensee is purchasing the spirituous liquor and the special event licensee.
    - b. The wholesaler issues a final billing invoice in the names of both the off-sale retailer from which the special event licensee is purchasing the spirituous liquor and the special event licensee within five business days after the special event ends, and
    - c. The spirituous liquor is stored securely to ensure only intended persons gain access to the spirituous liquor; and
  4. Selling spirituous liquor directly to the special event licensee at the same price the wholesaler sells the spirituous liquor to on-sale retailers. If the wholesaler sells spirituous liquor directly to the special event licensee, both the preliminary and final billing invoices shall be in the name of the special event licensee.
- L.** Providing shelves, bins, or racks. A wholesaler may lend a shelf, bin, or rack to a licensed off-sale retailer if the following conditions are met:
1. The shelf, bin, or rack lent to the licensed off-sale retailer is located in a point-of-sale area;
  2. The shelf, bin, or rack lent to the licensed off-sale retailer does not have an actual cost of more than \$300 per brand, as defined at 27 CFR Subchapter A, Section 6.11, at any one time in the licensed premises. The cost of the shelf, bin, or rack excludes the cost of transporting and installing the shelf, bin, or rack. The wholesaler shall not pool or combine dollar limitations to provide the licensed off-sale retailer with a shelf, bin, or rack that exceeds the dollar limitation in this subsection;
  3. The shelf, bin, or rack bears advertising regarding the wholesaler's product that is conspicuous, substantial, and permanently inscribed or securely affixed. The name and address of the licensed off-sale retailer may appear on the shelf, bin, or rack;
  4. The shelf, bin, or rack holds only the product advertised on the shelf, bin, or rack by the wholesaler; and
  5. The shelf, bin, or rack is not temperature controlled.
- M.** Providing product display enhancers. A wholesaler may lend to a licensed off-sale retailer a non-functional copy or reproduction of an item that enhances the display of spirituous liquor sold from the display.
- N.** Providing staff assistance. A wholesaler may use its staff to provide a licensed retailer with assistance in performing the activities outlined in this Section. A wholesaler shall not maintain staff or occupy office space on the licensed premises or at the corporate office of a licensed retailer.
- O.** This Section is authorized by A.R.S. §§ 4-203.02(H) through (J) and 4-243.

*Arizona Administrative Register / Secretary of State*  
**Notices of Supplemental Proposed Rulemaking**

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**R19-1-324. Standards for Exemption of an Unlicensed Business**

- A.** The owner of a business establishment, business premises, or association hosting a private social function or a small restaurant may act under A.R.S. § 4-244.05 if the owner of the business establishment, business premises, or association hosting a private social function or small restaurant:
1. Submits a Request for Exemption form, which is available from the Department and on its web site;
  2. Pays the inspection fee specified in R19-1-102(J); and
  3. Ensures that:
    - a. Possession or consumption of spirituous liquor on the business premises is permitted only as an incidental convenience to customers;
    - b. Possession or consumption of spirituous liquor on the business premises is limited as follows:
      - i. Small restaurant: between noon and 10:00 p.m.; and
      - ii. Business establishment, business premises, or association hosting a private social function: between 4:00 p.m. and 2:00 a.m.
    - c. A customer is allowed to possess or consume no more than:
      - i. Forty ounces of beer,
      - ii. Seven hundred fifty milliliters of wine, or
      - iii. Four ounces of distilled spirits;
    - d. The occupancy limitation of the business establishment, business premises, or association hosting a private social function or small restaurant does not exceed the following maximum:
      - i. Small restaurant: 50; and
      - ii. Business establishment, business premises, or association hosting a private social function: 300; and
    - e. The owner, manager, comptroller, controlling person, and any employee of the business establishment, business premises, or association hosting a private social function or small restaurant complies with all applicable provisions of A.R.S. Title 4 and this Chapter.
- B.** As provided under A.R.S. § 4-244.05 (J)(4), the Director, agent of the Director, or peace officer empowered to enforce A.R.S. Title 4 and this Chapter may visit and inspect a business establishment, business premises, association, or small restaurant operating under A.R.S. § 4-244.05 and this Section during business hours of the premises.
- C.** This Section is authorized by A.R.S. § 4-244.05.